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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,262	10/27/2000	Kai Cieliebak	CH919990038US1	7389

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IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT.
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EXAMINER

PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/699,262

Applicant(s)

CIELIEBAK ET AL.

Examiner

JAGDISH PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Election of process and apparatus

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-13 are drawn to method for managing (or determining) operational risk and return of production infrastructure with respect to a current portfolio of service-level agreements.

Group II . Claims 14-28 are drawn to computerized system, encoded with a method having an associated process flow, the method managing the risk of financial loss due to penalties brought on by noncompliance with respect to network service-level agreements (claims 14-19), encoded with a method for managing the risk of financial loss due to penalties brought on by noncompliance with respect to network service-level agreements (claims 20-21), encoded with a method executing a process flow which manages operational risk and return with respect to network service-level agreements, operating over a computer network comprising a plurality of computers and a plurality of resources (claims 22-23), encoded with a method which manages operational risk and return with respect to

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network service-level agreements in a network, wherein the service-level agreements have at least two classes each of which represents relative compliance guarantees (claim 24) and encoded with a method which manages operational risk and return with respect to service-level agreements wherein a customer subscribing to a higher relative compliance guarantee has a higher priority with respect to resources in the network, over customer having a lower relative compliance guarantee.

2. Inventions of Group I and Group II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, since the methods of Group I can be practiced another materially different apparatus or by hand and since the apparatus of Group II can be used to practice another and materially different process, it is asserted that the restriction to one of aforementioned inventions is proper. (see explanation of distinct features of each invention described in the following text.)

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Election of Species

3. If Group I (process) is elected, further election to one of the following species is required,

Group I contains claims directed to the following
patentably distinct species of the claimed invention:

Species I.A (claim 1-4): is directed to a method for managing operational risk and return of a production infrastructure with respect to a current portfolio of service-level agreements (SLAs) wherein the method comprises:
*calculating efficient frontier, baseline efficient frontier and
evaluating performance of the current portfolio and
efficient portfolios with the desired level of risk and return
and implementing corrective action based on any desired risk and
return.*

Species I.B (claims 5-11): is directed a method for managing operational risk and return with respect to a portfolio of service-level agreements (SLAs) wherein the method uses a *non-compliance risk measure to calculate risk and principals of portfolio theory are applied to characterize the portfolio for comparison with other portfolios.*

Species I.C: (claims 12-13): is directed a method for *determining risk and return of a production infrastructure with respect to a current portfolio, the calculating a selected risk, such as a financial risk or Quality of Service risk and comprises calculating portfolio risk, based on the actual Quality of Service and the contracted Quality of Service of the contracts of the portfolio using a risk measure corresponding to a selected risk.*

4. If Group II (Apparatus) is elected, further election to one of the following species is required,

Group II contains claims directed to the following
patentably distinct species of the claimed invention:

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Species II.A: (claims 14-19): is directed to an apparatus or a computerized system encoded with a method for managing the risk of financial loss due to penalties brought on by noncompliance with respect to network service-level agreements. The computerized method executes the steps of inputting gathered information such as a traffic statistics, price information and network information to yield risk and return and using an efficient frontier to identify an optimum portfolio of service level agreements, based on a maximum level of return for a given risk or a minimum risk for a given level of return.

Species II.B: (claims 20-21): is directed to an apparatus or a computerized system encoded with a method which calculates a probability of actual loss higher than allowed by a contract and a return, and, applying the principals of a portfolio theory, determines an efficient frontier to enable selection of an efficient portfolio that maximizes return at a given risk or minimizes risk at a given return.

Species II.C: (claims 22-23): is directed to an apparatus or a computerized system encoded with a method which executes a process flow which manages operational risk and return with respect to network service level agreements, operating over a computer network comprising a plurality of interconnected computers and a plurality of resources, each resource operatively coupled to at least one of the computers wherein the method manages a portfolio of service level agreements each of which define a service level, a connection, a contact duration, traffic descriptors.

Species II.D: (claim 24): is directed to an apparatus or a computerized system encoded with a method which manages operational risk and return with respect to network service-level agreements in a network, wherein the service-level agreements have at least two classes each of which represents relative compliance guarantees, wherein, a customer subscribing to a higher relative compliance guarantee has a higher priority with respect to resources in the network, over customer having a lower relative compliance guarantee.

Species II.E: (claims 25-28): is directed to an apparatus or a computerized system encoded with a method which manages

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operational risk and return with respect to network service-level agreements, wherein the method takes probabilities of noncompliance and base-line prices, and through the application of portfolio theory, calculates an efficient portfolio of service-level agreements.

The features listed in the above defined species belong to a generic method or apparatus of managing operational risk and return with respect to network service level agreements showing mutually exclusive and non-obvious characteristics.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic to all species.

5. A telephone call was made to Mr. Douglas W. Camron on 04/20/2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

6. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

7. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

8. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or

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admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

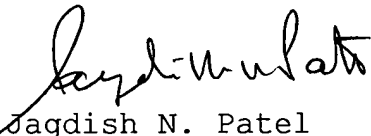
9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. **Conclusion**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagdish Patel whose telephone number is (703) 308-7837. The examiner can normally be reached Monday-Thursday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1038. The fax number for Formal or Official faxes to Technology Center 3600 is (703) 305-7687. **Draft faxes may be submitted directly to the examiner at (703) 746-5563.**

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113 or 308-1114. Address for hand delivery is 2451 Crystal Drive, Crystal Park 5, 7th Floor, Alexandria VA 22202.



Jagdish N. Patel

(Primary Examiner, AU 3624)

(enter date of OA)